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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,417	08/31/2004	Emmanouil Domazakis	CFAV-3	8356
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EXAMINER				
CHAWLA, JYOTI				
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1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,417

Applicant(s)

DOMAZAKIS, EMMANOUIL

Examiner

JYOTI CHAWLA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission and amendments filed on July 23, 2009 has been entered. Claims 6, 8-10 and 12 have been amended. Claims 6-10 and 12 remain pending and are examined in the application.

Specification

Applicant's response to the new matter in the specification submitted 12/1/2008 has been considered. In the specification submitted 7/23/09 applicant claims to have arranged the previously disclosed subject matter according to 37 CFR 1.77(b) and makes a statement that non new matter has been entered. Applicant's specification has been received however it has not been entered once again. Applicant has not complied with the following requirements:

The amendment filed 7/23/2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The newly added material which is not supported by the original disclosure has been added to the specification at several places, especially pages 5-7. An example is as follows: Page 5 of the newly submitted specification (of 7/23/09) is completely different from original specification page 5, line 15 to page 6, line 31. For instance, Paragraph 1 on page 5 of new specification "One embodiment... comprising steps of: (h)...(n) " (New spec page 5) was not part of the original disclosure.

There are other several new additions of words and phrases and embodiment features that were not part of original disclosure of 8/31/2004 and consequently add new matter to the specification.

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The added material which is not supported by the original disclosure of 8/31/04 will not be entered. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

Claim objections raised in the previous office action dated 3/19/09 have been withdrawn based on applicant's amendments dated 7/23/09.

Claim Rejections - 35 USC § 112(First paragraph)

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6-7, 9-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case, the amendments to claims 6 and 8, which include the following:

- Recitation of "stable distribution" in claim 6 (line 2 of step (e)); in claim 11 (line 2 step (c)) and claim 12.

Applicant disclosure does not disclose the term "stable distribution" and also does not disclose stability when feta type cheese is incorporated (see Publication of application [0007]). Thus, the original disclosure of the applicant discloses incorporation and also discloses stable structure, however, but does not disclose a "stable distribution" of feta cheese in meat, as instantly claimed. The disclosure also does not define what is stable or stability when feta type cheese is added to the meat and olive oil mixture. The recitation of "stable distribution" feta type cheese as recited in claims 6-7, 9-10, does not find support in the original disclosure, and is therefore, considered to be new matter.

Claim Rejections - 35 USC § 112(second paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Rejections of claims 6-10 and 12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention made in the previous office action have been withdrawn based on applicant's amendments dated 7/23/2009.

Claims 6-7, 9-10 are indefinite as claim 6 recites of "stable distribution" (emphasis added), which renders the claim indefinite. The term "stable distribution " is not defined by the claim. It is unclear as to what type of stability (physical or chemical or storage or something else) is encompassed by the phrase "stable distribution". The specification does not disclose stability. Thus, as disclosed neither the claim nor the specification provides a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of what is encompassed by the term "stable distribution" and therefore, the claim as recited is indefinite.

Claims 8 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "the cheese particles" in step (e), lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Claim recites "cheese pieces" earlier in the claim, which is not the same as "cheese particles". Correction and/or clarification is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

(A) Rejection of claims 6-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Hans Drexel (DE 10065633 A1), Ranken, and Mally (US4716821) has been withdrawn based on applicant' amendments dated 7/23/09 with RCE.

(B) Claims 6-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Doerr et al (DD 211709 English Abstarct only), Hans Drexel (DE 10065633 A1), Garderlander (EP 0505797 A), Ranken, and Mally (US4716821), hereinafter Mally.

The applied reference Domazakis has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(b).

The references and rejection are incorporated herein and as cited in the office action mailed 3/19/2009.

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Domazakis teaches of a method for preparing meat-based products, wherein the incorporation of olive oil (Page 1, line 3), and the addition of milk protein comprising the following steps:

Regarding steps (a-c) of claims 6 and 8, Domazakis teaches mixing meat with water at a temperature of 0 °C to -2 °C. Regarding the addition of salt, plant fibers and breadcrumbs Domazakis teaches of adding vegetable proteins and starch and spices (Page 3, lines 24-26), followed by the addition of olive oil when the temperature of mixture is 2 °C (Page 3, lines 26-28). Regarding addition of plant fibers, it is noted that plant proteins and plant materials, such as, spices as taught by Domazakis, typically include some cellulosic fiber. Furthermore, addition of plant based fibers to sausage or meat products was known at the time of the invention. Plant fibers, such as, cellulose and inulin add bulk to the meat based product and also act as binding agents. Addition of fiber or non-digestible bulking agent also provides an added benefit of reducing the caloric value of the food to which such fibers are added, as taught by Doerr et al (English Abstract only). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis in view of Doerr and include plant based fiber, such as, microcrystalline cellulose. One of ordinary skill would have been motivated to modify Domazakis at least for the purpose of reducing the energy content of sausages as disclosed by Doerr.

Domazakis reference also teaches that the addition of olive oil should be "direct in frost embodiment of olive oil" and critical temperatures for production of meat and olive oil based products are "0-4 °C" (Page 2, line 35 to Page 3, line 23). Domazakis reference also teaches that vacuum and temperature control at the time of mixing meat with olive oil is done to create "stable protein complex round the fat-orbs without the application of high temperatures" and insure "a stable behavior of the emulsion meat-paste in the phases of caloric process" (Page 2, line 45- page 3, line 23). Further, the claim as recited does not disclose the temperature of the olive oil, when it is added to water and meat mixture. Thus, general meat processing conditions as taught by Domazakis for processing of meat, water and olive oil sausage product are combined in a temperature

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range of -2 °C to 4 °C, which is the same as recited by the applicant. Domazakis teaches of water at -2 °C and meat at 0 °C and oil addition when the mixture is at 2 °C and continuation of mixing and vacuuming till the mixture reaches 4 °C (Domazakis page 3, lines 24-32), wherein the invention as claimed recites of meat at -2 °C, water at 2 °C and olive oil addition when mixture is at 0 °C mixing and vacuuming till the mixture reaches 4 °C (Page 3, lines 29-31) (claims 6 and 8 steps (a-c)). Modifying the temperatures of individual ingredients (water, meat and olive oil) each other while maintaining the processing temperature of meat water and olive oil mixture was within the purview of one of ordinary skill at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis and incorporate individual ingredients (oil, water and meat) at slightly different temperatures during processing of the meat, water and olive oil mixture, while still maintaining the general processing conditions of vacuum and temperature within the processing temperature range of -2 °C to 4 °C, at least based on the equipment and ingredients available.

Regarding steps (d-g) Domazakis teaches addition of milk protein to the meat and olive oil mixture (Page 3, lines 26-36), continuing vacuum mixing until the ingredients are totally dispersed throughout the resulting product (Page3, lines 26-36), as recited in step (e) ;

Domazakis also teaches conveying the resulting product to a filling machine (forming machine), where it is formed in desired shape and stored, with a simultaneous vacuum application at 1000 mbar. The product as taught by Domazakis is exposed to a heat treatment as it is pasteurized at 71 °C. Domazakis teaches that the processing time varies between 1-3 hours based on the diameter of the product (Page 3, lines 31-36). Domazakis also teaches of moving the resulting product into a freezer unit with temperatures in the range of -2 to 2 °C (Page3, lines 35-36 and page 2, lines 35-40) which will make the core temperature of the product reach 0 °C, i.e., the core of the product will be frozen, as instantly claimed in step (g).

Regarding step (d) Domazakis teaches of a process of making the meat based product wherein milk protein is incorporated in the meat and olive oil mixture (Page 3, lines 26-36). Process taught by Domazakis produces pork meats with olive oil products with excellent stability (Domazakis, page 3, lines 38-43), i.e., stable incorporation. However, Domazakis is silent as to the addition of feta type cheese and stable incorporation throughout the mixture. However, it was known at the time of the invention that cheeses comprise milk proteins and meat products containing cheese were known at the time of the invention (e.g., Bratwurst Links with cheddar, Sonoma sausage). Further, sausages wherein soft and/ or fresh cheeses are added to the meat in order to make a low fat sausage product were also known at the time of the invention as taught by Hans Drexel, hereinafter, Drexel (Abstract). Thus, sausage type foods comprising cheese were known in the art at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method as taught by Domazakis and add cheese to the meat and olive oil mixture based on the teachings of Drexel. One would have been motivated to add cheese at least to provide an additional protein source in the meat product and make a cheese flavored meat sausage as taught by Drexel.

Regarding feta type cheese as recited in claims, Drexel teaches of addition of fresh and soft cheese to the meat sausage product (Translation pages 1-2). Further, feta was known at the time of the invention as a soft cheese. Therefore, to substitute any soft or fresh cheese for another in the process of making sausage product of Domazakis based on the teachings of Drexel would have been a matter of routine determination to one of ordinary skill in the art at the time of the invention. One of ordinary skill would have been motivated to substitute one art recognized functional equivalent (i.e. soft /fresh cheese) for another (i.e. feta cheese) in the process of making the meat based sausage product as disclosed by Domazakis (modified by Drexel), at least for the reasons of taste preference, availability and affordability of a cheese at the time the invention was made. Further, applicant's attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

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This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding the addition of cheese as pieces was known at the time of the invention as disclosed by prior art of record (See EP 0505797 A to Garderlander, Figure 1 and English abstract). Further, addition of cheese as cheese pieces or lumps or paste would have been a matter of choice for one of ordinary skill in the art at the time of the invention. One would have been motivated to use paste if homogenous mixture of meat and cheese was desired or one would choose pieces or lumps of cheese if distinctly visible portions of meat and cheese, wherein the cheese pieces are detached from the surrounding meat matrix is desired in the finished sausage product. One of ordinary skill at the time of the invention would have been motivated to include cheese clumps or pieces or paste, at least based on the desired appearance of the finished sausage product.

Regarding step (e) Domazakis reference does not specifically teach the refrigeration step with CO₂ while mixing, however, Domazakis teaches of mixing the product under vacuum (Page 3, lines 25-35) in the temperature range as recited by the applicant. Domazakis further teaches of the criticality of maintaining suitable temperature in the process of adding olive oil to meat (Page 2, lines 10-40) in order to make a stable emulsion as claimed. Domazakis also teaches that the critical temperature for the production of meat and olive oil emulsion for making sausage like products lie in the range of 0-4 °C and freezing temperature (0 °C). Thus, the step of vacuum mixing while

maintaining a low temperature is maintained as taught by Domazakis would have required refrigerated conditions in order to maintain the processing conditions of Domazakis. Further, lowering temperature by introducing CO₂ (i.e., dry ice) was well known at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis and use CO₂ to maintain refrigeration temperature in the meat processing area, at least for the purpose of processing meat in microbially safe temperature zone. One would have been further motivated by the inhibitory effect of CO₂ on the growth of aerobic bacteria on meat based products.

Regarding step (f) Domazakis teaches of heating the minced meat product at 71°C to pasteurize the product prior to freezing. Domazakis also teaches process time of 1-3 hours. Domazakis teaches that it was known at the time of the invention to heat the minced meat product for a time and a temperature to preserve the product either by cooking, pasteurizing etc. Domazakis teaches substantially the claimed method but does not teach a step of "heat treatment at 96-99 °C and relative humidity of 95-96 % in a linear boiler". NPL reference of record, Ranken discloses heat treatment and relative humidity as known variables in the cooking of meat products explaining that a higher temperature and humidity (such as, steaming) provides improved cooking (see table 7.2 and pages 110-112). Accordingly, it would have been obvious to one of ordinary skill in art to use the teachings of Ranken in the range as claimed, because it has been held that where the general conditions of the claims are disclosed in the prior art, it is not inventive to discover the optimum or workable range by routine experimentation. See *In re Aller*, 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955).

Regarding the linear boiler, it is noted that a boiler is an equipment to produce steam and since Ranken teaches the advantages of steaming meats and given that use of a linear boiler to produce steam is well known in the art. Therefore, it would have been obvious for one of ordinary skill in the art to modify Domazakis and use an equipment, such as, a linear boiler to produce steam and heat the meat product. Using a specific water heating means to produce steam and heat the meat product with steam would not

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impart patentable distinction to the claims, absent any clear and convincing evidence and/ or arguments to the contrary.

Regarding step (g) Domazakis teaches of freezing the product after pasteurization (i.e., heat treatment). Domazakis teaches of freezing in freezing chambers (i.e., tunnel) with temperature of -2 °C to 2 °C, which includes applicant's recited temperature of 0 °C.

Claims 6 and 7 recite of a heat treatment time and temperature but do not recite a size range of the product. Regarding claim 7, Domazakis teaches that the time of the entire process varies based on the diameter of the product (page 3, lines 30-37), i.e., the heat treatment time as taught by Domazakis is related to the size of the product, as instantly claimed. Further, the applicant is referred to the rejection of step (f) above, where Ranken teaches that steaming foods was known for its advantages of providing very good heat transfer (Ranken page 111). Thus, steaming meats was known (Ranken) and also was determination of heating time based on the size of the product (Domazakis). It was also well known at the time of the invention that

- At a given temperature, method and equipment of heating, the time required to raise the temperature of food varies with the size of the food product, e.g., it would require a longer heat treatment time for a 1 inch thick piece of meat or sausage as compared to 0.5 inch thick meat or sausage.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis based on the teachings of Ranken and heat the meat based product till it reaches the desired temperature range. It would have been a matter of routine determination for one of ordinary skill to modify the time of heating based on the size of the food product in order to effectively heat the food product as instantly claimed. Further, changing the time of heat treatment would not lend patentable distinction to the claims as recited, absent any clear and convincing evidence and/ or arguments to the contrary.

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Claim 8, as recited includes the limitations of claim 6 and is rejected for the same reasons as discussed in the office action above regarding claim 6. Claim 8, differs from claim 6 and the prior art by the recitation of a minced meat product with a feta cheese filling. Domazakis in view of Drexel teaches of minced meat foods with cheese where the cheese is homogenously mixed with the mince. However, minced meat food products with filling were also known in the art at the time of the invention as taught by Mally et al, hereinafter Mally. Mally teaches of minced meat product with cheese as a filling (Abstract, Columns 1 and 5). Thus products where minced meat products have cheese as a filling were known at the time of the invention and to use cheese as a filling material as compared to making a homogenous mixture of mince with cheese would not have involved an inventive step. Therefore one of ordinary skill in the art at the time of the invention would have been motivated to further modify Domazakis in view of Mally to make a minced meat product with cheese as a filling in order to obtain a cheese filled minced meat product as claimed instantly. One would have been motivated to do so in order to have a product that comprises two distinct flavors and is also visually appealing upon transverse cutting.

Regarding claims 9 and 10, Domazakis in view of combination of Drexel, Garderlander, Ranken and Mally teaches meat -based products characterized by the addition of olive oil and cheese and are prepared by the method as instantly claimed.

Regarding claim 12, see the rejection of claims 6 and 8. Domazakis in view of Drexel Ranken and Mally teaches meat -based products characterized by the addition of olive oil and fresh cheese, such as, feta cheese, either homogenously mixed with minced meat or as a filling in the food product as instantly claimed.

Response to Arguments

Applicant's remarks about specification have been considered and responded in the office action above.

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Applicant's arguments dated 7/23/2009 with respect to claims 6-10 and 12 over Domazakis in view of combination of references have been considered but are moot in view of new grounds of rejection.

i) Applicant's remarks dated 7/23/2009, specifically directed to Domazakis where applicant alleges that "Domazakis has used "milk protein" as an extra emulsifying /stabilizing factor, whereas by direct contrast, the feta cheese pieces of the present application constitutes a decidedly de-stabilizing factor. The purpose of using milk protein in Domazakis is therefore diametrically opposed to the addition of feta cheese pieces in the present application. The use of "milk protein" in Domazakis was therefore being used to solve a technological problem, while the use of "feta cheese pieces" in the present application creates a technological problem, which arises because the feta cheese pieces of the present application are not finely comminuted and mixed in the meat phase of the present application to produce an optically homogenous phase there within. Instead, feta cheese pieces remain intact and visible in the resulting product, comprising a discontinuous phase of the emulsion that is detached from its surrounding meat matrix." (See remarks, page 7, paragraph 1). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case Garderlander, Hans Drexel and Mally teach the sausage product with feta cheese and Sonoma sausage provides evidence that sausages with feta cheese are known, as discussed above and in the previous office action.

ii) Further, in response to applicant's argument that "current application provides a technological solution that allows the stable incorporation of two destabilizing factors: olive oil and feta cheese" (Remarks, page 7), it is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined

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teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

iii) Applicant's argument that "Stable incorporation of olive oil and feta cheese pieces of the present application is attributed to the stabilizing and entrapping network provided by the combination of meat, water, salt, breadcrumbs and plant fibers, as well as to the selected processing conditions " (Remarks, page 8, last 6 lines).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "Stable incorporation of olive oil and feta cheese pieces of the present application is attributed to the stabilizing and entrapping network provided by the combination of meat, water, salt, breadcrumbs and plant fibers, as well as to the selected processing conditions" are not recited in the rejected claim(s) as such. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Double Patenting

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

I) Claims 6-10 and 12 are rejected on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No.10/506,411, as discussed in previous office action of 3/19/09.

Applicant's remarks regarding the double patenting rejection have been considered, however, new limitations of addition of feta cheese pieces and mixing to achieve stable emulsified product (of current application '417) have also been incorporated in the currently pending claims of application '411. Thus, the reasons provided in the previous office action still remain and rejection of claims 6-10 and 12 on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No.10/506,411 is maintained for the reasons of record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla
Examiner
Art Unit 1794

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1794